



## INTERIOR BOARD OF INDIAN APPEALS

Loretta Flint, et al.; and Ernestine Broncho Werelus  
v. Portland Area Director, Bureau of Indian Affairs

30 IBIA 291 (04/22/1997)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

LORETTA FLINT, ALFREDA DENNY,	:	Order Docketing and Dismissing
ROSALEAN JOHNNIE, EL TERESE	:	Appeals
FERGUSON, WILVERNA COVINGTON,	:	
BOBETTE HASKETT, JANALEE MONTES,	:	
HOWARD MEEKS, and CARMENCITA	:	
WADSWORTH,	:	
Appellants	:	
	:	
and	:	Docket Nos. IBIA 97-113-A
	:	IBIA 97-114-A
ERNESTINE BRONCHO WERELUS,	:	
Appellant	:	
	:	
v.	:	
	:	
PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	April 22, 1997

On April 18, 1997, the Board of Indian Appeals (Board) received a Notice of Appeal and Statement of Reasons from Loretta Flint, Alfreda Denny, Rosalean Johnnie, El Terese Ferguson, Wilverna Covington, Bobette Haskett, Janalee Montes, Howard Meeks, and Carmencita Wadsworth (Flint Appellants), through counsel, Howard A. Belodoff, Esq., Boise, Idaho. The Flint Appellants state that they seek review of a March 17, 1997, letter from the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning Lease No. 91-26 on the Fort Hall Reservation. The Flint Appellants apparently own interests in the land covered by this lease.

On April 21, 1997, the Board received a second appeal from the Area Director's March 17, 1997, decision. This appeal was filed by Ernestine Broncho Werelus (Werelus), who states that her appeal is on her own behalf and other lessors who have granted me the authority to represent them." Because Werelus did not identify any of these other lessors, for purposes of this order the Board treats Werelus as the only appellant in the second appeal. From statements in her Notice of Appeal, it is evident that Werelus' appeal has the same factual background as is shown in extensive materials submitted by the Flint Appellants.

Those materials include a January 16, 1997, letter which was sent to the Superintendent, Fort Hall Agency, BIA (Superintendent). That letter addresses concerns about Lease No. 91-26, and contains the following paragraph:

The failure of the BIA to comply with the leasing regulations has adversely effected [sic] the rights of the allottees and the allottees' ability to protect their interests under the lease. I request that formal notice be given to the lessees within ten days of receipt of this letter. Unless the formal notice of lease violations is issued within ten days of receipt of this letter or a date is established by which action will be taken, the allottees will proceed with an appeal from inaction of the Secretary and his employees pursuant to 25 C.F.R. § 2.8.

The Flint Appellants have also submitted a February 3, 1997, Notice of Appeal and Statement of Reasons addressed to the Area Director. This Notice indicates that it was filed under 25 C.F.R. § 2.8 by four of the present Flint Appellants.

In his March 17, 1997, letter, the Area Director states that he had received a February 28, 1997, Answer of Interested Party and Request for Extension of Time from the lessees under Lease No. 91-26. The Area Director's letter states at page 1:

While it would appear that other documents should have been filed in connection with the appeal, none have been received.

We contacted the Fort Hall Agency . On March 17, 1997, they indicated that an appealable decision had not been issued yet on Lease No. 91-26, but that one was expected to be issued in the very near future. Since no appealable decision has been issued, there is no basis for an appeal. As such, we are closing the file in this matter. If, after the Agency issues its decision, you decide to file an appeal, we will create a new administrative record at that time.

The Flint Appellants submitted an April 4, 1997, decision issued by the Superintendent. That decision states that it can be appealed to the Area Director.

Rather than appealing the Superintendent's April 4, 1997, decision to the Area Director, both of these appeals seek Board review of the Area Director's March 17, 1997, decision. Through invoking 25 C.F.R. § 2.8, the Appellants here sought a decision on the substance of their dispute. They have received such a decision from the Superintendent. The Board sees no good reason for by-passing review of the Superintendent's decision by the Area Director. See Hackford v. Phoenix Area Director, 30 IBIA 270 (1997); Shaahook Group of Capitan Grande Band of Diegueno Mission Indians v. Director, Office of Tribal Services, 27 IBIA 43 (1994) (both dismissing appeals filed under section 2.8 when it was apparent that the proper BIA officials were responding to the appeal, even though that response might not have precisely met the requirements of section 2.8). Accordingly, the Board dismisses these appeals as premature. If the Superintendent's decision is appealed to the Area Director, any party who is unhappy with the Area Director's decision will have an opportunity to appeal to the Board.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, these appeals from the Portland Area Director's March 17, 1997, letter are docketed and dismissed as premature.

//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

//original signed  
Anita Vogt  
Administrative Judge